

Corps of Engineers, Dept. of the Army, DoD

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costs for services provided to Federal agencies and private persons.

(b) *Level of effort.* For establishing charges, services covered by the Fee Schedule have been divided into five levels as follows:

(1) Level 1 includes the provision of basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter to the customer.

(2) Level 2 includes the provision of information from readily available data that requires minimal technical evaluation and is transmitted by form letter to the customer.

(3) Level 3 includes the provision of information that requires some file search, a brief technical evaluation, and documentation of results by a form letter or brief composed letter to the customer.

(4) Level 4 includes the provision of information and assistance that requires moderate file search, a brief technical evaluation, and documentation of results in a composed letter to the customer.

(5) Level 5 includes the provision of information and assistance that requires significant file search or retrieval of archived data, a moderate technical evaluation, and documentation of results in a brief letter report to the customer.

(c) *Charge determination.* The Fee Schedule will be used Corps-wide. As requests are received, the responding office will select the appropriate level on the Fee Schedule to determine the charge for providing the service.

(d) *Provision of services.* The services will be provided on a first-come, first-served basis after payment has been received.

(e) *Fees.* The Fee Schedule, including a brief description of the services in each of the five levels and the related charges, is shown in Table 1 to this section. The fee for each level is based on a Corps-wide average of estimated current costs for providing that level of service.

(f) *Review and revision of fees.* The fees shown in the Fee Schedule will be reviewed each fiscal year using the most current cost data available. If nec-

essary, the Fee Schedule will be revised after public notice and comment.

TABLE 1 TO § 242.6—FEE SCHEDULE; STANDARD CORPS-WIDE CHARGES FOR FPMS TASKS REQUIRING MORE THAN TEN MINUTES AND UP TO ONE DAY

Level	Description of work	Fee
1	Basic information from readily available data that does not require technical evaluation or documentation and is transmitted by form letter.	\$25
2	Information from readily available data that requires minimal technical evaluation which is transmitted by form letter.	55
3	Information that requires some file search, brief technical evaluation, and documentation of results by a form letter or by a brief composed letter.	105
4	Information and assistance that requires moderate file search, brief technical evaluation, and documentation of results in a composed letter.	165
5	Information and assistance that requires significant file search or retrieval of archived data, moderate technical evaluation, and documentation of results in a brief letter report.	325

PART 245—REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

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AUTHORITY: 5 U.S.C. 301; 33 U.S.C. 1, 409, 411-415; 10 U.S.C. 3012.

SOURCE: 53 FR 27513, July 21, 1988, unless otherwise noted.

§ 245.1 Purpose.

This part describes administrative procedures and policy used by the Corps of Engineers in exercising its authority for wreck removal. Procedures are intended to insure that the impacts of obstructions are minimized, while recognizing certain rights of owners, operators and lessees.

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§ 245.3 Applicability.

(a) These procedures apply to the removal of wrecks or other obstructions within the navigable waters of the United States, as defined in part 329 of this chapter.

(b) This part does not apply to the summary removal or destruction of a vessel by the Coast Guard under authority of the Clean Water Act (33 U.S.C. 1321), or to any removal actions involving obstructive bridges which are subject to separate regulation under part 114 of this title.

(c) For vessels which were sunk or wrecked prior to November 17, 1986, the statutory obligation to remove belongs solely to the owner (not the operator or lessee), and the owner's obligation to reimburse the U.S. Treasury for federal removal is limited to cases of voluntary or careless sinking.

§ 245.5 Definitions.

Abandonment means the surrendering of all rights to a vessel (or other obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned.

Hazard to navigation is an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

Obstruction is anything that restricts, endangers or interferes with navigation.

Responsible party means the owner of a vessel and/or cargo, or an operator or lessee where the operator or lessee has substantial control of the vessel's operation.

Vessel as used in this part includes any ship, boat, barge, raft, or other water craft.

§ 245.10 General policy.

(a) *Coordination with Coast Guard.* The Corps of Engineers coordinates its wreck removal program with the Coast Guard through interagency agreement, to insure a coordinated approach to the protection of federal interests in navigation and safety. Disagreements at the field level are resolved by referral to higher authority within each agency, ultimately (within the Corps of En-

gineers) to the Director of Civil Works, who retains the final authority to make independent determinations where Corps responsibilities and activities are affected.

(b) *Owner responsibility.* Primary responsibility for removal of wrecks or other obstructions lies with the owner, lessee, or operator. Where an obstruction presents a hazard to navigation which warrants removal, the District Engineer will attempt to identify the owner or other responsible party and vigorously pursue removal by that party before undertaking Corps removal.

(c) *Emergency authority.* Obstructions which impede or stop navigation; or pose an immediate and significant threat to life, property, or a structure that facilitates navigation; may be removed by the Corps of Engineers under the emergency authority of section 20 of the Rivers and Harbors Act of 1899, as amended.

(d) *Non-emergency situations.* In other than emergency situations, all reported obstructions will be evaluated jointly by the District Engineer and the Coast Guard district for impact on safe navigation and for determination of a course of action, which may include the need for removal. Obstructions which are not a hazard to general navigation will not be removed by the Corps of Engineers.

(e) *Corps removal.* Where removal is warranted and the responsible party cannot be identified or does not pursue removal diligently, the District Engineer may pursue removal by the Corps of Engineers under section 19 of the Rivers and Harbors Act of 1899, as amended, following procedures outlined in this CFR part.

§ 245.15 Delegation.

District Engineers may undertake removal without prior approval of the Chief of Engineers provided the cost does not exceed \$100,000. Removals estimated to cost above \$100,000 require advance approval of the Director of Civil Works.

§ 245.20 Determination of hazard to navigation.

(a) Upon receiving a report of a wreck or other obstruction, District

Engineers will consult with the Coast Guard district to jointly determine whether the obstruction poses a hazard to navigation.

(b) Factors to be considered, as a minimum, include:

(1) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns.

(2) Navigational difficulty in the vicinity of the obstruction.

(3) Clearance or depth of water over the obstruction, fluctuation of water level, and other hydraulic characteristics in the vicinity.

(4) Type and density of commercial and recreational vessel traffic, or other marine activity, in the vicinity of the obstruction.

(5) Physical characteristics of the obstruction, including cargo, if any.

(6) Possible movement of the obstruction.

(7) Location of the obstruction in relation to existing aids to navigation.

(8) Prevailing and historical weather conditions.

(9) Length of time the obstruction has been in existence.

(10) History of vessel accidents involving the obstruction.

§ 245.25 Determination of remedial action.

(a) *Consultation with Coast Guard.* After a determination has been made that an obstruction presents a hazard to navigation, District Engineers will consult with the Coast Guard district to determine appropriate remedial action for the specific situation.

(b) *Options.* The following options, or some combination of these options, may be considered:

(1) No action.

(2) Charting.

(3) Broadcast notice to mariners and publication of navigational safety information.

(4) Marking.

(5) Redefinition of navigational area (e.g., channel, fairway, anchorage, etc.).

(6) Removal.

§ 245.30 Identification of responsible parties.

(a) *Investigation.* When marking or removal are determined to be appro-

priate remedial action and no emergency situation exists, the District Engineer will investigate to determine the owner or, if the owner cannot be determined, the lessee or operator. If cargo is involved, ownership will be separately determined.

(b) *Notification.* If the owner or other responsible party can be determined, the District Engineer and/or the Coast Guard will send a notice, via certified mail, advising them of their legal obligation to mark (referencing Coast Guard requirements) and to remove the obstruction, and of the legal consequences for failure to do so, with a request for prompt reply of intent.

(c) *Public notice.* If the owner or responsible party cannot be determined from investigation, the District Engineer will publish a legal advertisement in a newspaper nearest the location of the obstruction and in a newspaper of at least 25,000 circulation, addressed "To Whom It May Concern," requiring removal by the owner, lessee or operator. The advertisement will be published at least once a week for 30 days.

§ 245.35 Judgments to require removal.

When the owner or responsible party has been identified, and refuses or fails to take prompt action toward removal, the District Engineer may seek a judgment by the district court requiring removal.

§ 245.40 Removal by responsible party.

(a) *Corps monitoring.* If the owner, lessee or operator agrees to remove a hazard to navigation, the District Engineer should ascertain that:

(1) Marking is accomplished promptly and is maintained,

(2) The plan for removal and disposal is reasonable and acceptable to the District Engineer,

(3) Removal operations do not unreasonably interfere with navigation,

(4) All conditions of the Corps of Engineers permit are met, and

(5) Removal operations are pursued diligently.

(b) *Deficiencies.* If the removal actions are not proceeding satisfactorily, the District Engineer will notify the responsible party of the deficiencies and

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provide a reasonable time for correction. If not corrected promptly, the District Engineer may declare the wreck “abandoned” and proceed with actions toward Corps removal.

§ 245.45 Abandonment.

(a) *Establishing abandonment.* Abandonment is the surrendering of all rights to a vessel (or similar obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned. In all cases other than emergency, abandonment will be established as a precondition to Corps removal, to avoid a “taking” of private property for public purposes. Abandonment is established by either:

(1) Affirmative action on the part of the owner declaring intention to abandon, or

(2) Failure to commence immediate removal of the obstruction and prosecute such removal diligently.

(b) *Owner declaration.* The Corps of Engineers will not “accept” a notice of abandonment. Any notice of abandonment received by the Corps of Engineers will be acknowledged only, and will stand by itself as a declaration. Abandonment by the operator or lessee alone does not constitute abandonment.

(c) *Non-diligence.* The determination of whether removal is commenced immediately and prosecuted diligently will be made by the District Engineer based on the degree of hazard to navigation, the difficulty and complexity of the removal operation, and the appropriateness of the removal effort. When no removal actions are being undertaken and the District Engineer is unable to identify the owner through investigation or 30 days of public notice, abandonment is presumed.

(d) *Cargo.* If vessel and cargo are separately owned, or ownership of cargo is uncertain, abandonment of vessel and cargo will be established separately.

(e) *Later claims.* After abandonment is established, the owner may no longer undertake removal or make any claim upon the vessel (or other obstruction) or its cargo, unless expressly permitted by the District Engineer.

(f) *Continuing owner liability.* The abandonment of a wreck or other obstruction does not remove the owner’s

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liability for the cost of removal and disposal if removal is undertaken by the Corps of Engineers, except in cases of nonnegligent sinking which occurred prior to November 17, 1986.

§ 245.50 Removal by Corps of Engineers.

(a) *Non-emergency situations.* In non-emergency situations, the District Engineer may undertake removal action (within the limits of delegation) after all of the following conditions have been met:

(1) A determination has been made, in consultation with the Coast Guard, that the obstruction is a hazard to navigation,

(2) The District Engineer and the Coast Guard agree on a course of action which includes the need for removal (or, if a conflict exists, the need for removal has been resolved at higher level),

(3) The District Engineer has made a reasonable attempt to identify the owner, operator, or lessee, and

(4) Abandonment of the wreck or obstruction has been established.

(b) *Emergency actions.* In emergency situations, the District Engineer may bypass (within the limits of delegation) any or all of the four conditions in the preceding paragraph if, in his judgment, circumstances require more immediate action, and if either one of the following conditions are met:

(1) The obstruction impedes or stops navigation, or

(2) The obstruction poses an immediate threat to life, property, or a structure that facilitates navigation.

§ 245.55 Permit requirements.

(a) *Permits for removal.* Marking and removal operations by the owner, operator or lessee are normally permitted under nationwide permits for such activities as outlined in part 330 of this chapter. The activities must meet certain conditions as stated in those regulations, and additional permits may still be required from state or local agencies.

(b) *Special conditions.* The Corps of Engineers may add individual or regional conditions to the nationwide permit, or require an individual permit on a case-by-case basis.

§ 245.60 Reimbursement for removal costs.

The Corps of Engineers will seek reimbursement from the owner, operator, or lessee, if identified, for all removal and disposal costs in excess of the value of the recovered vessel (or other obstruction) and cargo.

PART 263—CONTINUING AUTHORITIES PROGRAMS**Subpart A—General**

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APPENDIX B TO PART 263—APPLICATION OF MULTIOBJECTIVE PLANNING FRAMEWORK TO CONTINUING AUTHORITIES PROGRAM

AUTHORITY: See § 263.13.

SOURCE: 40 FR 51134, Nov. 3, 1975, unless otherwise noted.

Subpart A—General**§ 263.10 Purpose.**

This regulation provides policies and procedures for seven legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design and construct certain types of water resource improvements without specific Congressional authorization.

§ 263.11 Applicability and effective date.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities. This regulation is effective December 1, 1975, as published in the FEDERAL REGISTER on November 3, 1975 and codified as 33 CFR part 263. The provisions of this regulation are fully applicable to studies commenced and projects initiated after the effective date. For studies underway on the effective date, reporting and approving officers shall fully consider the requirements of this regulation and shall take those actions as necessary to insure that projects are approved on the basis of criteria established by this regulation.

§ 263.12 References.

- (a) ER 11-2-201, Civil Works Activities, Funding, Work Allowances and Transfers.
- (b) ER 405-2-680 Local Cooperation Projects.
- (c) ER 1105-2-10 Intensive Management.
- (d) ER 1105-2-402 Organization and General Content of Feasibility Reports.
- (e) ER 1105-2-403 Format and Appearance of Feasibility Reports.
- (f) ER 1105-2-502 Public Meetings (33 CFR 209.405).
- (g) ER 1105-2-507 Preparation and Coordination of Environmental Statements (33 CFR 209.410).
- (h) ER 1105-2-800 Public Involvement: General Policies (33 CFR 380).
- (i) ER 1105-2-811 A-95 Clearinghouse Coordination (33 CFR 384).
- (j) ER 1110-2-1150 Post-Authorization Studies.
- (k) ER 1165-2-18 Reimbursement for Advance Non-Federal Participation in Civil Works Projects.